

1 THE HONORABLE JAMAL N. WHITEHEAD  
2  
3  
4  
5  
6  
7  
8

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

9 KIM SIFLINGER, individually and on behalf of  
10 all others similarly situated,

11 Plaintiff,

12 v.

13 ALBERTSONS COMPANIES, INC., a foreign  
14 limited liability corporation, and SAFEWAY  
15 INC., a foreign corporation,

Defendants.

16 NO. 2:23-cv-682

17 **STIPULATION AND ORDER REGARDING  
18 THE PARTIES' LIMITED AGREEMENT TO  
19 ARBITRATE ISSUES CONCERNING THE  
20 SCOPE OF THE ALLEGED AGREEMENT TO  
21 ARBITRATE**

**NOTED FOR CONSIDERATION:**  
22 JULY 27, 2023

23 **WHEREAS**, on April 7, 2023, Plaintiff Kim Siflinger commenced this action (the "Action")  
24 by filing a Class Action Complaint in Washington Superior Court, King County, asserting claims  
25 against Defendants Albertsons Companies, Inc. and Safeway Inc. (together, "Defendants")  
26 under the Washington Consumer Protection Act, on behalf of herself and a proposed class;

27 **WHEREAS**, on May 10, 2023, Defendants filed a timely Notice of Removal to this Court  
(ECF No. 1);

28 **WHEREAS**, on May 12, 2023, Plaintiff filed a First Amended Class Action Complaint  
(ECF No. 10) (the "Complaint"), which is currently the operative complaint in this Action;

29 **WHEREAS**, on June 12, 2023, Defendants filed a Motion to Compel Arbitration or, in  
30 the Alternative, to Dismiss for Failure to State a Claim (ECF No. 23) (the "Motion");

31  
32 STIPULATION AND ORDER REGARDING THE PARTIES' LIMITED  
33 AGREEMENT TO ARBITRATE ISSUES CONCERNING THE SCOPE  
34 OF THE ALLEGED AGREEMENT TO ARBITRATE - 1

35 Case No. 2:23-cv-00682-JNW

TERRELL MARSHALL LAW GROUP PLLC  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
TEL. 206.816.6603 • FAX 206.319.5450  
[www.terrellmarshall.com](http://www.terrellmarshall.com)

1           **WHEREAS**, as part of the Motion, Defendants asserted that Plaintiff and Defendants  
 2 are parties to a contract, substantially in the form set forth in Exhibit A to the Declaration of  
 3 Kevin Michael, dated June 7, 2023 (ECF No. 24) (the “Terms of Use”), containing a provision  
 4 (paragraph 24, the “Arbitration Clause”) in which Plaintiff and Defendants purportedly agreed  
 5 to arbitrate certain disputes;

6           **WHEREAS**, Defendants further asserted in the Motion that the Arbitration Clause  
 7 contains a delegation provision by which Plaintiff and Defendants purportedly agreed that any  
 8 disputes concerning the scope of the Arbitration Clause would be decided by an arbitrator in  
 9 the first instance;

10          **WHEREAS**, Plaintiff disputes that she entered into a binding agreement to arbitrate  
 11 any disputes she may have or had with Defendants and disputes that the Arbitration Clause  
 12 Defendants seek to enforce contains a delegation provision;

13          **WHEREAS**, Plaintiff further disputes that the scope of the Arbitration Clause would  
 14 encompass the subject matter of this Action, even if such an enforceable arbitration  
 15 agreement exists; and

16          **WHEREAS**, notwithstanding the foregoing, Plaintiff has nevertheless agreed to consent  
 17 to confidential arbitration for the limited and sole purpose of determining whether the claims  
 18 asserted in this Action fall within the scope of the Arbitration Clause;

19          **NOW, THEREFORE**, Plaintiff and Defendants (the “Parties”) jointly stipulate and agree as  
 20 follows, subject to the Court’s approval:

21          1.       The Recitals are incorporated herein by reference to the same extent and with  
 22 the same force and effect as if fully set forth herein.

23          2.       Plaintiff consents to arbitration under the terms set forth in the Arbitration  
 24 Clause solely and exclusively for the limited purpose of determining the threshold issue of  
 25 arbitrability—*i.e.*, whether the claims at issue in this Action fall within the scope of the  
 26 Arbitration Clause. If the arbitrator determines that the claims at issue in this Action fall within  
 27 the scope of the Arbitration Clause, Plaintiff agrees that she must arbitrate those claims

1 according to the terms of the Arbitration Clause and the Terms of Use.

2       3. In an effort to further streamline proceedings and promote judicial economy, the  
3 Parties agree to produce certain documents and information (as specified in Schedule A hereto)  
4 within 30 days of the service on Defendants of an arbitration demand by Plaintiff. The Parties  
5 otherwise agree that the discovery requests served by Plaintiff on June 14, 2023, are moot and  
6 no further response by Defendants is required.

7       4. The Parties agree that the arbitration will be kept confidential except that they  
8 may disclose to this Court whether the arbitrator concludes that the claims at issue in this  
9 Action fall within or outside the scope of the Arbitration Clause. Nothing in this stipulation  
10 precludes either party from moving in this Court for entry of an order enforcing an arbitrator's  
11 award or ruling under 9 U.S.C. § 9.

12       5. The Parties respectfully request that the Court stay this Action pending the  
13 outcome of the arbitration proceeding described above and that this Court retain jurisdiction,  
14 as necessary, pending the outcome of such arbitration proceeding.

15       6. The Parties further agree to submit joint status reports to the Court every 30  
16 days until the stay described above is lifted. The first such status report shall be due on  
17 September 1, 2023.

18       7. The Parties further agree that this Stipulation is without prejudice to the  
19 dismissal arguments under Federal Rule of Civil Procedure 12(b)(6) that Defendants raised in  
20 the Motion and that Defendants may renew those arguments after the arbitrator rules on the  
21 threshold issue of arbitrability—*i.e.*, whether the claims at issue in this Action fall within the  
22 scope of the Arbitration Clause.

23       This Stipulation may be signed in counterparts. A facsimile, PDF, or electronic signature  
24 on this Stipulation shall have the same force and effect as an original signature.

25

26

27

## SCHEDULE A

## **For Production by Defendants**

1. All documents reviewed by Kevin Michael in connection with preparation of his declaration dated June 7, 2023 (Dkt. No. 24), including but not limited to the documents constituting “ACI’s records,” as that phrase is used in Paragraph 8 of Mr. Michael’s declaration.

2. A copy of the contractual terms that relate to Ms. Siflinger's Club Card account or to any "predecessor Club Cards," as available, and as described in paragraph 8 of Mr. Michael's declaration.

3. Documents reflecting any purchases made by Ms. Siflinger in her capacity as a visitor to or a user of any ‘Site,’ as that term is defined in the ‘Terms of Use’ attached as Exhibit A to the Declaration of Kevin Michael (ECF No. 24-1) and identifiable by reference to (a) Ms. Siflinger’s Safeway and/or ACI account information or (b) other information specific to Ms. Siflinger (e.g., credit card, email address, etc.).

## **For Production by Plaintiff**

4. All documents within Ms. Siflinger's custody, possession, or control related to her Safeway Club Card and/or Safeway for U accounts, purchases she made using a Safeway Club Card and/or Safeway for U account, and her download and/or use of the Safeway mobile app (the application Safeway makes available to customers for download and use on a mobile device).

1 STIPULATED TO AND DATED this 27th day of July, 2023.

2 TERRELL MARSHALL LAW GROUP PLLC

3 By: /s/ Blythe H. Chandler

4 Beth E. Terrell, WSBA #26759

5 Email: bterrell@terrellmarshall.com

6 Blythe H. Chandler, WSBA #43387

7 Email: bchandler@terrellmarshall.com

8 936 North 34<sup>th</sup> Street, Suite 300

9 Seattle, Washington 98103

10 Telephone: (206) 816-6603

11 SUGERMAN DAHAB

12 David F. Sugerman, *Pro Hac Vice Forthcoming*

13 Email: david@sugermanahab.com

14 Nadia S. Dahab, *Admitted Pro Hac Vice*

15 Email: nadia@sugermanahab.com

16 707 SW Washington Street, Ste. 600

17 Portland, OR 97205

18 Telephone: (503) 228-6474

19 TIM QUENELLE, PC

20 Tim Alan Quenelle, *Pro Hac Vice Forthcoming*

21 Email: tim.quenelle@gmail.com

22 4800 SW Meadows Road, #300

23 Lake Oswego, OR 97035

24 Telephone: (503) 675-4330

25 BERGER MONTAGUE, P.C.

26 E. Michelle Drake, *Admitted Pro Hac Vice*

27 Email: emdrake@bm.net

43 SE Main Street, Suite 505

Minneapolis, Minnesota 55414

Telephone: (612) 594-5999

25 Attorneys for Plaintiffs

26 PERKINS COIE LLP

27 TERRELL MARSHALL LAW GROUP PLLC

936 North 34th Street, Suite 300

Seattle, Washington 98103-8869

TEL. 206.816.6603 • FAX 206.319.5450

www.terrellmarshall.com

1 By: /s/ David A. Perez (with permission)

2 James F. Williams, WSBA #23613

3 Email: JWilliams@perkinscoie.com

4 David A. Perez, WSBA #43959

5 Email: DPerez@perkinscoie.com

6 Mallory Gitt Webster, WSBA #50025

7 Email: MWebster@perkinscoie.com

8 1201 Third Avenue, Suite 4900

9 Seattle, Washington 98101-3099

10 Telephone: (206) 359-8000

11 Facsimile: (206) 359-9000

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
*Attorneys for Defendant Albertson's Companies,  
Inc. and Safeway Inc.*

## **ORDER**

IT IS SO ORDERED. This matter is STAYED pending the outcome of arbitration. The parties shall provide status reports every 30 days to the Court regarding the arbitration. The Clerk shall ADMINISTRATIVELY CLOSE the case subject to reopening upon completion of arbitration. If the arbitrator determines that the claims at issue in this Action fall outside the scope of the Arbitration Clause and are not required to be arbitrated under the Arbitration Clause and Terms of Use, Defendants may within 30 days of the arbitrator's determination renew in this Court the arguments they made under Federal Rule of Civil Procedure 12(b)(6) in the Motion (ECF No. 23).

DATED this 31st day of July, 2023.



Jamal N. Whitehead  
United States District Judge